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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of the National Customs Automation Program (NCAP) Tests Concerning the Partner Government Agency Message Set for Certain Data Required by the Environmental Protection Agency (EPA)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify three National Customs Automation Program (NCAP) tests concerning the electronic transmission through the Automated Commercial Environment (ACE) of certain import data required by the Environmental Protection Agency (EPA) for commodities regulated by the EPA. These modifications revise the number of persons who may participate in the three previously announced NCAP tests.

DATES: The modifications of the PGA Message Set Tests described in this notice are effective [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

These modified tests will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the announced modifications may be submitted during each of the test periods to the address set forth below.

ADDRESSES: Comments concerning this notice and any aspect of the modified PGA Message Set Test may be submitted at any time during the testing periods via email to Josephine Baiamonte, ACE Business Office (ABO), Office of International Trade, at

josephine.baiamonte@cbp.dhs.gov. In the subject line of your email, please indicate, “Comment on PGA Message Set Test FRN.”

FOR FURTHER INFORMATION CONTACT: For technical questions related to the application or request for an ACE Portal Account contact the ACE Account Service Desk by calling 1-866-530-4172, selecting option 1, then option 2, or by emailing ACE.Support@cbp.dhs.gov for assistance. For EPA-related questions, contact Carol S. Holmes, Senior Counsel, Office of Civil Enforcement, U.S. Environmental Protection Agency, at Holmes.Carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization (“Customs Modernization Act”), North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, Dec. 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization has been on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for processing commercial trade data which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions. The Automated Broker Interface (ABI) is the electronic data interchange

(EDI) system that enables members of the trade community to file electronically required import data with CBP and transfers that data to ACE.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions. Each release will begin with a test and, if the test is successful, will end with mandatory use of the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section XI and entitled, "Development of ACE Prototypes." The procedures and criteria related to participation in the prior ACE test pilots remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

II. Authorization for the Test

The Customs Modernization Act provisions provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The tests described in this notice are authorized pursuant to §101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. See Treasury Decision (T.D.) 95-21, 60 FR 14211 (March 16, 1995).

III. International Trade Data System (ITDS)

These tests are also in furtherance of the International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006 ("SAFE Port Act") (Sec. 405, Pub. L. 109-347, 120 Stat. 1884, Oct. 13,

2006) (19 U.S.C. 1411(d)) and in Executive Order 13659 of February 19, 2014,

Streamlining the Export/Import Process for America's Businesses, 79 FR 10657

(February 25, 2014). The purpose of ITDS, as stated in section 405 of the SAFE Port Act, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. CBP is developing ACE as the “single window” for the trade community to comply with the ITDS requirement established by the SAFE Port Act.

Executive Order 13659 requires that by December 31, 2016, ACE, as the ITDS “single window,” have the operational capabilities to serve as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export, and to transition from paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, U.S. government agencies.

IV. Partner Government Agency (PGA) Message Set Test

The PGA Message Set is the data needed to satisfy the PGA reporting requirements. ACE enables the message set by acting as the “single window” for the submission of trade-related data required by the PGAs only once to CBP. After validation, the data will be made available to the relevant PGAs involved in import, export, and transportation-related decision making. The data will be used to fulfill merchandise entry requirements and may allow for earlier release decisions and more

certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, the PGA Message Set will eliminate the necessity for the submission and subsequent handling of paper documents.

Under the Paperwork Reduction Act of 1995 (Public Law 104-13, 109 Stat. 163, codified at 44 U.S.C. §§ 3501-3520) (PRA), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget (OMB). A collection of information, however, is exempt from the requirements of the PRA if fewer than ten (10) persons will be asked to provide the information.

This notice addresses the modification of the following three previously announced tests under the NCAP with respect to the number of test participants. (Please note that all terms, conditions, rules and requirements announced in the previous notices concerning the submission through ACE of certain EPA data through the PGA Message Set continue to apply except to the extent expressly modified by this notice.)

A. Non-Road Vehicles and Engines

On December 13, 2013, CBP published a notice in the **Federal Register** announcing CBP's plan to modify the PGA Message Set test to allow for electronic filings of certain EPA import data with CBP for a variety of vehicles and engines. See 78 FR 75931 (December 13, 2013). That test notice did not limit the number of filers or participants. As the collection of electronic information under the PGA Message Set EPA Non-road Vehicles and Engines is governed by the PRA and the test notice inadvertently indicated that there was an OMB-approved Information Collection Request (ICR) for this additional information collection when there is not such an ICR for this

additional information, participation in the non-road vehicles and engines portion of the test is hereby limited to nine (9) or fewer filers (see Section IX below). Accordingly, in order to comply with the participation limitation of the PRA, only up to nine filers seeking to participate in this test will be accepted at this stage of the test. CBP will accept applications throughout the duration of this test.

Applicants who qualify for this test but are not accepted because the limit of nine filers has been reached will have their applications placed on hold until and unless CBP lifts the limit on participation. All applicants will be notified that they have, or have not, been accepted into the test. If the limitation is lifted applicants will be notified of whether CBP has accepted their request to participate in the test and the date they can begin participation. CBP will not, however, publish another notice if the limitation is lifted. Rather, CBP will contact those who have applied and notify them that the limitation for participants has been lifted. Additionally, this test is expanded to all entries filed in ACE at any port in the customs territory of the United States.

B. Notice of Arrival: Pesticides or Pesticidal Devices

On February 4, 2015, CBP published a notice in the **Federal Register** announcing CBP's plan to modify the PGA Message Set test to expand the use of the ACE PGA Message Set to transmit Environmental Protection Agency (EPA) Notice of Arrival of Pesticides and Devices (NOA) import data in the ocean and rail modes of transportation. See 80 FR 6098. That notice indicated that CBP would accept an unlimited number of participants for the test. As the collection of electronic information under the PGA Message Set EPA NOA is governed by the PRA and the test notice inadvertently indicated there was an OMB-approved Information Collection Request (ICR) for this

additional information collection when there is not such an ICR for this additional information, participation in the test is hereby limited to nine (9) or fewer participants (see Section IX below). Accordingly, in order to comply with the participation limitation of the PRA, only up to nine filers seeking to participate in this test will be accepted throughout the duration of the test.

CBP will accept applications throughout the duration of this test. All applicants will be notified that they have, or have not, been accepted into the test. Applicants who qualify for this test but are not accepted because the limit of nine filers has been reached will have their applications placed on hold until and unless CBP lifts the limit on participation. If the limitation is lifted applicants will be notified of whether CBP has accepted their request to participate in the test and the date they can begin participation. CBP will not, however, publish another notice if the limitation is lifted. Rather, CBP will contact those who have applied and notify them that the limitation has been lifted. (If the limitation is lifted, the test will also require the mandatory filing of the product label affixed to the pesticide cargo via the pdf format into the Digital Image System, which must accompany the electronic filing of the Notice of Arrival PGA Message Set). Additionally, this test is expanded to all entries filed in ACE at any port in the customs territory of the United States.

C. Ozone Depleting Substances

In the **Federal Register** notice announcing the test for the submission of data and information related to the importation of Ozone Depleting Substances (ODS) through the PGA Message Set, CBP announced that the test would be limited to nine (9) or fewer filers. See 78 FR 75931 (December 13, 2013). All PRA requirements for the ODS pilot

have been met since the publication of the above-referenced December 13, 2013, **Federal Register** notice (see Section IX below). Therefore, the limitation of nine filers is lifted and there is no longer a limit to the number of parties who may participate in this test. Applications may be submitted throughout the duration of the test and applicants will be notified of their acceptance into the test and the date they may begin participating. Additionally, this test is expanded to all modes of transportation, not exclusively ocean as was previously the case, and to all entries filed in ACE at any port in the customs territory of the United States.

V. Test Duration

Except as stated below, the modification of all three of the PGA Message Set Tests announced in this notice are effective on [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. The modified PGA Message Set Tests will continue until concluded by way of announcement in the **Federal Register**.

At the conclusion of the testing, an evaluation will be conducted and the results of that evaluation will be published in the **Federal Register** and the Customs Bulletin as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

VI. Comments

All interested parties are invited to comment on any aspect of these ACE Portal Account Tests, as modified by this notice, for the duration of the modified tests. CBP requests comments and feedback on all aspects of these modifications, including the design, conduct and implementation of the modifications, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement these modifications.

VII. Waiver of Regulations under this Test

For purposes of these tests, any provision in title 19 of the Code of Federal Regulations including, but not limited to, the provisions found in part 12 that are inconsistent with the requirements set forth in this notice are waived for the duration of these tests. See 19 CFR 101.9(b). This document, however, does not waive any recordkeeping requirements found in part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”).

VIII. Previous Notices

All requirements, terms and conditions, and aspects of the ACE tests discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

IX. Paperwork Reduction Act

The collection of information related to the importation of Ozone Depleting Substances has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB Information Collection Request (ICR) numbers 2060-0170 and 2060-0498. With respect to the two other ICRs, EPA will request OMB approval for its ICRs for the collection of information related to (1) the importation of non-road vehicles and engines and (2) the notice of arrival for pesticides or devices consistent with proposed revisions to the related CBP regulations at 19 CFR part 12. Once OMB approves those information collections CBP will lift the limit on participation in (1) the non-road vehicles and engines test and (2) the notice of arrival for pesticides or devices test.

X. Confidentiality

All data submitted and entered into ACE may be subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential by CBP, except to the extent as otherwise provided by law. The Electronic Export Information (EEI) is also subject to the confidentiality provisions of 15 CFR 30.60. As stated in previous notices, participation in these or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

XI. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).

- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image

- System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
 - Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
 - National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
 - Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
 - Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
 - Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for

Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414
(March 27, 2015).

- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- ACE Export Manifest for Vessel Cargo Test: 80 FR 50644 (August 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- ACE Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).

- Automated Commercial Environment (ACE) Fillings for Electronic Entry/Entry Summary (Cargo Release and Related Entry): 80 FR 61278 (October 13, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release Test for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Portal Account Test to Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Customs Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).

- Modification of National Customs Automation Program (NCAP) Test
Concerning the Automated Commercial Environment (ACE) Partner
Government Agency (PGA) Message Set Regarding the Toxic Substances
Control Act (TSCA) Certification Required by the Environmental Protection
Agency (EPA): 81 FR 7133 (February 10, 2016).

Dated: March 9, 2016.

Brenda B. Smith,
Assistant Commissioner,
Office of International Trade.

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